

Form PTO-1594  
(rev 3/1)**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**U. S. Department of Commerce  
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

**Wells Fargo Bank, National Association  
8<sup>th</sup> Floor 201 Third Street  
San Francisco, CA 94111**☐ Individual(s) ☒ Association  
☐ General Partnership ☐ Limited Partnership  
☐ Corporation  
☐ OtherAdditional name(s) of conveying party(ies) attached? ☒ Yes ☐ No

## 2. Name and Address of receiving party(ies)

**Black Diamond Commercial Finance, LLC  
One Hibiscus Alley  
St. Thomas, Virgin Islands 00802**☐ Individual(s) citizenship  
☐ Association  
☐ Limited Partnership  
☐ Corporation  
☒ Other – **Virgin Islands Limited Liability Company**If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other: **Appointment of Successor  
Administrative Agent**Execution Date: **May 17, 2004**

## 4. Application number(s) or registration number(s):

## A. Trademark Application No(s).

**75845684  
78183089**

## B. Trademark Registration No(s).

**0940262 2044477 2443043 1014325  
1126672 1420480 1468251 1448455  
2267689 2146624 1987243 1990036  
1988663 1990032 1990031 2155203  
2264167 2393988 1923545**Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

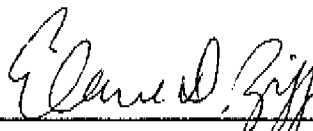
**Elaine D. Ziff, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP  
Four Times Square  
New York, New York 10036**6. Total number of applications/registrations involved: **21**7. Total fee (37 CFR 3.41) **\$540**☒ All fees and any deficiencies are authorized to be charged to Deposit Account  
(Our Ref. 697870/1)**Authorized User: Michael McGuire**8. Deposit Account No. **19-2385**

DO NOT USE THIS SPACE

## 9. Signature.

**Elaine D. Ziff**

Name



Signature

**September 24, 2004**

Date

Total number of pages including cover sheet, attachments, and document: **14**

CH \$540.00 192385 75845684

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**CONTINUATION OF Item 1. Names of Additional Conveying Parties**

**Smarte Carte Corporation  
4455 White Bear Parkway  
St. Paul, MN 551107641  
Corporation - Minnesota**

## APPOINTMENT OF SUCCESSOR ADMINISTRATIVE AGENT

This Appointment of Successor Administrative Agent (this "Appointment"), dated as of May 17, 2004, is entered into among the undersigned Lenders, each of which is a party to the Credit Agreement (defined below), Wells Fargo Bank, National Association ("Wells Fargo"), as Administrative Agent under the Credit Agreement, Black Diamond Commercial Finance, LLC ("BDCF") and Smarte Carte Corporation (the "Borrower").

1. Reference is hereby made to that certain Credit Agreement, dated as of April 8, 1999, as amended by the First Amendment thereto, dated as of April 20, 1999, the Second Amendment thereto, dated as of July 5, 2002, the Forbearance and Third Amendment thereto, dated as of October 29, 2003 and the Fourth Amendment thereto, dated as of February 27, 2004 (as further amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"), among SMC Holdings Corp., as Guarantor, the Borrower, the Lenders party thereto (the "Lenders") and Wells Fargo, as Administrative Agent. Capitalized terms used herein and not otherwise defined herein have the meanings ascribed thereto in the Credit Agreement.

2. Pursuant to, and in accordance with, subsection 9.5A of the Credit Agreement, Wells Fargo (the "Retiring Administrative Agent") has given notice of its resignation as Administrative Agent.

3. Pursuant to, and in accordance with, subsection 9.5A of the Credit Agreement, the undersigned Lenders hereby (x) appoint BDCF as the successor Administrative Agent (in such capacity, the "Successor Administrative Agent") and (y) notify the Borrower of such appointment and BDCF hereby accepts such appointment, such appointment and acceptance to be effective on the Effective Date (defined below).

4. Pursuant to subsection 9.5A of the Credit Agreement, the appointment of BDCF as Successor Administrative Agent and the resignation of the Retiring Administrative Agent shall become effective simultaneously without the necessity of any further act on the date (the "Effective Date") which is the fifth (5<sup>th</sup>) Business Day following delivery to the Borrower of a copy of this Appointment duly executed by the Requisite Lenders and BDCF or such later date as may be specified in writing by BDCF and Wells Fargo. On the Effective Date, BDCF shall immediately succeed to and become vested with all the rights, powers, privileges and duties of the Retiring Administrative Agent and the Retiring Administrative Agent shall be discharged from its duties and obligations under the Credit Agreement, all in accordance with Section 9.5A of the Credit Agreement.

5. The undersigned Lenders hereby direct the Retiring Administrative Agent to, and the Retiring Administrative Agent hereby agrees to, (i) on or prior to the Effective Date, transfer, assign and convey to the Successor Administrative Agent, any and all sums, securities and all other items of Collateral in possession of the Retiring

*Appointment of Successor Administrative Agent*

Administrative Agent pursuant to any Loan Document in its capacity as Administrative Agent (including, without limitation, delivering all pledged stock certificates and other instruments), and (ii) subject to paragraph 7 hereof, forthwith following the date hereof, execute any and all instruments, agreements and other documents, including but not limited to assignments of financing statements and assignments of mortgages and deeds of trust, reasonably requested by the Successor Administrative Agent to properly transfer, assign or convey any other Collateral (collectively, the "Transfer Documents"), and deliver such information relating to the administration of the Loans to the Successor Administrative Agent as the Successor Administrative Agent may reasonably request.

6. The parties hereto agree that the Borrower shall: (a) pay all the actual and reasonable costs and expenses of negotiation, preparation, execution and recordation of this Appointment and the Transfer Documents, including all filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and fees of foreign counsel related to the assignment of foreign collateral, (b) reimburse BDCF as Successor Administrative Agent pursuant to subsection 10.2 of the Credit Agreement for its actual and reasonable costs and expenses incurred (including the fees, expenses and disbursements of counsel) in connection with this Appointment and the Transfer Documents, and (c) reimburse the Retiring Administrative Agent within 30 days of receipt of a written invoice for the actual and reasonable costs and expenses of the Retiring Administrative Agent (including the fees, expenses and disbursements of counsel to the Retiring Administrative Agent) incurred in connection with (i) the Retiring Administrative Agent's review, negotiation and execution of this Appointment and the Transfer Documents, (ii) the Retiring Administrative Agent's transfer, assignment and conveyance of all sums, securities and other items of Collateral held by it pursuant to any Loan Document and (iii) the Retiring Administrative Agent's delivery of information relating to the administration of the Loans requested by the Successor Administrative Agent.

7. The parties acknowledge that the Borrower has deposited the sum of \$150,000 with O'Melveny & Myers LLP as a retainer (the "Retainer") for the costs, attorneys' fees and expenses associated with the Retiring Administrative Agent's engagement of O'Melveny & Myers LLP. The parties further acknowledge that notwithstanding the assignment effected hereby, the Borrower shall continue to be responsible for the payment of certain costs, fees and expenses of the Retiring Administrative Agent under subsection 10.2 of the Credit Agreement incurred prior to the Effective Date and agree that the balance of the Retainer shall be retained by O'Melveny & Myers LLP to be applied to all such costs, fees and expenses as well as the costs, fees and expenses of the Retiring Administrative Agent that are not otherwise paid by the Borrower within 30 days after receipt of a written invoice therefor pursuant to paragraph 6 hereof. The parties further agree that (a) if at any time the amount of the Retainer fails to exceed \$25,000, the Borrower shall, within three Business Days of receipt of notice of such fact from O'Melveny & Myers LLP, replenish the Retainer to an amount not less than \$50,000 and (b) if Borrower fails to (i) reimburse Retiring Administrative Agent pursuant to paragraph 6 hereof for its costs, fees and expenses within 30 days after receipt of a written invoice therefor or (ii) fails to replenish the Retainer to a level of \$50,000 within three Business Days of receipt of notice from O'Melveny & Myers LLP pursuant

*Appointment of Successor Administrative Agent*

to this paragraph 7, the obligations of the Retiring Administrative Agent under this Appointment shall be suspended and shall not resume until such time as Borrower remedies both failures. Upon payment in full of all costs, fees and expenses to be paid by the Borrower pursuant to the Credit Agreement or under this Appointment, any remaining amount of the Retainer shall be refunded to the Borrower.

8. The parties hereto agree that the Successor Administrative Agent is authorized to record in the U.S. Patent and Trademark Office, U.S. Copyright Office or any other governmental agency or registry of intellectual property, this Appointment, or any and all other instruments, agreements and documents as may be reasonably required or requested by the Successor Administrative Agent or Lenders to evidence the resignation of the Retiring Administrative Agent and the appointment of the Successor Administrative Agent, with respect to any and all applications and registrations for intellectual property which are part of the Collateral, including the applications and registrations set forth on Schedule A hereto. The parties hereto agree that the Retiring Administrative Agent makes no representation or warranty that the applications and registrations for intellectual property listed on Schedule A hereto constitute all of the applications and registrations for intellectual property that are part of the Collateral.

9. Each of the parties hereto hereby authorize Successor Administrative Agent to file any financing statements or amendments relating to the financing statements currently filed in connection with the Credit Agreement and the other Loan Documents (including, without limitation, any financing statements "in lieu" of continuation statements, terminations, continuations, assignments or other amendments) necessary to reflect and/or give effect to the resignation of the Retiring Administrative Agent and the appointment of the Successor Administrative Agent contemplated hereby.

10. The parties hereto agree that the Borrower shall pay to the Retiring Administrative Agent a pro rata portion of the annual administrative agency fee for the period from and including April 8, 2004 to and including the Effective Date.

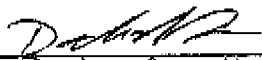
11. THIS APPOINTMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

12. This Appointment and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

*Appointment of Successor Administrative Agent*

IN WITNESS WHEREOF, the parties hereto have caused this Appointment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

BLACK DIAMOND COMMERCIAL  
FINANCE, LLC

By:   
Name: Dalia Al-Ghman  
Title: managing director

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*Appointment of Successor Administrative Agent*

BANKAUSTRIA CREDITANSTALT  
CORPORATE FINANCE, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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TRADEMARK  
REEL: 002945 FRAME: 0774

*Appointment of Successor Administrative Agent*GENERAL ELECTRIC CAPITAL  
CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_


Title: \_\_\_\_\_

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*Appointment of Successor Administrative Agent*

**BDCM OPPORTUNITY FUND, LP.**

**by Black Diamond Capital Management, L.L.C.**  
**its General Partner**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**James J. Zenri, Jr.**  
**President & Managing Partner**  
**Black Diamond Capital Management, L.L.C.**

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TRADEMARK  
REEL: 002945 FRAME: 0776

*Appointment of Successor Administrative Agent*DEUTSCHE BANK TRUST COMPANY  
AMERICAS

By: DB Services New Jersey, Inc.

By: 

Name: Edward Schaffer

Title: Vice President

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TRADEMARK

REEL: 002945 FRAME: 0777

*Appointment of Successor Administrative Agent*

SMARTE CARTE CORPORATION

By:   
Name: Garrett S. Roosma  
Title: Executive Vice President  
& Chief Financial Officer

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*Appointment of Successor Administrative Agent*

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Retiring Administrative  
Agent:

By: Name: Title: 

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TRADEMARK

REEL: 002945 FRAME: 0779


May.11. 2004 4:28PM Black Diamond Capital Management  
MAY 11 2004 5:01 PM FR DEUTSCHE BANK  
MAY 10 2004 3:29PM ALLSTATE INT LAW

No.4593 P. 3  
TO 918475829183 P.02/02

*Appointment of Successor Administrative Agent*



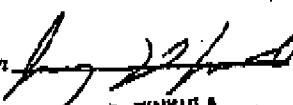
ALLSTATE INSURANCE COMPANY

By:   
Name: CHRIS GOERGEN  
Title: \_\_\_\_\_

ALLSTATE LIFE INSURANCE  
COMPANY



By:   
Name: CHRIS GOERGEN  
Title: \_\_\_\_\_

By:   
JERRY D. ZINKULA

Authorized Signatories

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\*\* TOTAL PAGE.02 \*\*

**SCHEDULE A****Existing Applications and Registrations for Intellectual Property****Registered U.S. Trademarks:**

<b>Serial Number</b>	<b>Application Date</b>	<b>Registration Number</b>	<b>Registration Date</b>
72/382662	2/2/71	0940262	8/8/72
74/625642	1/26/95	2044477	3/11/97
75/497152	6/3/98	2443043	4/10/01
73/039690	2/16/74	1014325	6/24/75
73/128619	5/31/77	1126672	11/13/79
73/598967	5/15/86	1420480	12/09/86
73/631550	11/21/86	1468251	12/08/87
73/634639	12/10/86	1448455	7/21/87
75/358908	9/18/97	2267689	8/03/99
74/719367	1/06/98	2146624	3/24/98
74/722174	8/23/95	1987243	7/16/96
74/719652	8/23/95	1990036	7/30/96
74/719370	4/30/96	1988663	7/23/96
74/719244	8/23/95	1990032	7/30/96
74/719233	8/23/95	1990031	7/30/96
74/719230	8/23/95	2155203	5/05/98
75/363257	6/10/98	2264167	7/27/99
75/497153	6/03/98	2393988	10/10/00
74/553025	7/25/94	1923545	10/03/95

**Pending U.S. Trademarks:**

<b>Serial Number</b>	<b>Application Date</b>	<b>Registration Number</b>	<b>Registration Date</b>
75/845,684	11/10/99		
78/183,089	11/08/02		

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